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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/805,056

03/19/2004

John E. Meyers

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06/15/2007

ZIMMER TECHNOLOGY - BAKER & DANIELS
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EXAMINER

STEWART, ALVIN J

ART UNIT

PAPER NUMBER

3738

MAIL DATE

DELIVERY MODE

06/15/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/805,056

Applicant(s)

MEYERS ET AL.

Examiner

Alvin J. Stewart

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17 and 21-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17 and 21-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application
- ☒ Other: attachment

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Terminal Disclaimer

The terminal disclaimer filed on 04/03/07 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US 6,485,519 & US 6,719,800 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 21, and 23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The limitations “for preventing substantial liftoff of said meniscal...” has not been found in the specification and the examiner has not been able to see the limitations as an inherent characteristic of the device. Correction is required.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 36 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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The examiner is not clear if the Applicant's representative is referring to the hinge post aperture of the tibial component or the hinge post aperture of the meniscal component. Correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 17, 21 and 36 rejected under 35 U.S.C. 102(b) as being anticipated by Pappas et al US Patent 5,824,096.

Pappas et al discloses a prosthetic knee (100) comprising a femoral component (200) having a hinge post (207), a hinge post extension (302), a tibial component (500), a hinge post extension aperture (503), whereby the femoral component is rotatable about the longitudinal axis of the hinge post extension (see col. 6, lines 17-27). A meniscal component (400), a condylar bearing surface (203), a condylar bearing surface (203) and a cooperative bearing surface (407).

Regarding claim 21, the examiner has interpreted the claim as follow, element (340) is the guide means and the whole system is connected to each part in order to prevent substantial liftoff of the meniscal.

Regarding claim 36, the Examiner has interpreted the hinge post aperture of the tibial component instead of the meniscal component

Claims 17, 31 and 36 rejected under 35 U.S.C. 102(b) as being anticipated by Finn US Patent 5,370,701.

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Finn discloses a prosthetic knee (10) comprising a femoral component (12) having a hinge post (70), a hinge post extension (56), a tibial component (14), a hinge post extension aperture (see fig. 2), whereby the femoral component is rotatable about the longitudinal axis of the hinge post extension. A meniscal component (16), a condylar bearing surface, a condylar bearing surface and a cooperative bearing surface.

Regarding claim 31, Fig. 15 discloses a screwed aperture, where the screw (130) is threaded.

Response to Arguments

Applicant's arguments filed 04/03/07 have been fully considered but they are not persuasive.

The examiner completely disagrees with the Applicant's point of view regarding the whereby clause disclosing: "said hinge post is fully constrained by said tibial component against displacement in a direction perpendicular to a longitudinal axis of said hinge post extension".

The following is the way the examiner interpreted the functional language of the whereby clause: the hinge post (207) is FULLY constrained with respect to the tibial component (500) because element 207 is attached and fully constrained to "hinge post extension (302)" and the hinge post extension is fully constrained to the aperture (503) of the tibial component (500). The specification and the drawings, especially Fig. 14, clearly disclose that the post extension (302) with the hinge post is completely immovable against any anterior or posterior displacement. The bearing is the structure that moves in the anterior-posterior direction and the hinge post extension rotates but doesn't displace. Therefore, there is no displacement in a direction perpendicular to a longitudinal axis of said hinge post extension (see attachment).

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Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alvin J. Stewart whose telephone number is 571-272-4760. The examiner can normally be reached on Monday-Friday 7:00AM-5:30PM(1 Friday B-week off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



ALVIN J. STEWART
PRIMARY EXAMINER

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June 7, 2007.

FIG-14

